

ST 89-0368 - 05/18/1989 SALE FOR RESALE

A sale for resale must be documented by a valid certificate of resale.

May 18, 1989

Attention:

Dear Ms.:

This is to acknowledge receipt of your letter of April 27, 1989. In your letter you state the following:

We are a computer company located in Minnesota. We sold equipment to a company located in Pennsylvania. We have shipped equipment to a customer of theirs who is located in your state. (Shipped via common carrier).

The company we sold the equipment to (located in PA) has a resale certificate for the State of Pennsylvania.

What is needed for the exemption of tax for your state?

We have outstanding receivables at this point and your prompt response is appreciated. I have enclosed a self-addressed, stamped envelope for your reply, or you can fax your response to my attention at ( )- .

From your letter, we understand that you are registered to collect Illinois Use Tax when shipping merchandise into Illinois. On the sale in question, you must either collect Illinois Use Tax or document an exemption. If the Pennsylvania company claims to be a reseller of the equipment, it should provide you with a certificate of resale. The requirements for a valid certificate of resale are noted in 86 Ill. Adm. Code 130.1410, enclosed. Since the Pennsylvania company does not have an active Illinois registration or resale number, it will not be able to provide you with a valid certificate of resale.

In our opinion, the Pennsylvania company must do one of two things in order to relieve you of your duty to collect Illinois Use Tax. First, the Pennsylvania Company can apply for a resale number. Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers, such as , with certificates of resale when purchasing items which will be resold. So long as the Pennsylvania company does not act as an Illinois retailer (purchase orders not subject to acceptance in Illinois and equipment not located in its Illinois inventory at the time of sale) and, so long as it does not fall under the definition of a "retailer

maintaining a place of business in this State" (please refer to 86 Ill. Adm. Code 150.201(i) and 150.801, enclosed), its sales to Illinois customers are not subject to Illinois Retailers' Occupation Tax liability and it cannot be required to act as a Use Tax collector. So long as this is true, the Pennsylvania company qualifies for a resale number which does not involve the collection of tax from customers and does not require the filing of tax returns with the Illinois Department of Revenue. Application for a resale number is made at Section II(B) on the enclosed application form. The Pennsylvania company should check the box marked "Other" and specify "Applicant is an outof-State seller with no Illinois contacts and is, therefore, not required to register as a retailer or Use Tax collector".

Please note that the fact the Pennsylvania company may not be required to act as a Use Tax collector for Illinois does not relieve its Illinois purchaser of Use Tax liability. Therefore, if the Pennsylvania company does qualify for a resale number, its Illinois purchaser would have to pay its tax liability directly to the Illinois Department of Revenue.

We think this approach is the best approach because it relieves you of any duty to collect Illinois Use Tax and it gives the Pennsylvania company the ability to properly document the sale for resale exemption.

The second alternative is the product of recent legislation. Recent legislation now provides that, in the absence of a valid certificate of resale, which includes a valid Illinois registration or resale number, there is a rebuttable presumption that a sale is not for resale. In light of this language, you could rebut the presumption by providing other evidence that your sale was a sale for resale. The problem is that an Illinois auditor is more likely to go behind a certificate of resale which does not contain an Illinois registration or resale number and require you to prove, through additional evidence, that your sale to the Pennsylvania company was a sale for resale. However, if the Pennsylvania company refuses to apply for a resale number, you should, at a minimum, require it to provide you with other evidence that it did resell what you sold to it. Other evidence could be invoices showing that the same merchandise you sold to the Pennsylvania company was resold by it to the Illinois customer. Again, however, an Illinois auditor may require additional evidence to document the fact that the merchandise sold to the Pennsylvania company was, in fact, resold by the Pennsylvania company to the Illinois customer to whom you dropshipped the equipment.

If you have any additional questions, please feel free to contact us.

Very truly yours,

Randall P. Bower  
Staff Attorney

